JUB'LI MOHAMED TAIB TARAL & ORS

v.

SUNWAY LAGOON SDN BHD

HIGH COURT MALAYA, KUALA LUMPUR
TEE AH SING J
[SUIT NO: S9(S4)-23-72-98]
8 AUGUST 2001

DAMAGES: *Quantum - Loss of dependency - Loss of services - Nervous shock - Bereavement - Civil Law Act 1956, s. 7*

CIVIL PROCEDURE: *Damages - Claim for special damages - Whether proved*

DAMAGES: *Quantum - Loss of dependency - Appropriate multiplier - Civil Law Act 1956, s. 7(3)(iv)(d)*

DAMAGES: *Fatal accident - Loss of love and affection - Whether recoverable*

DAMAGES: *Fatal accident - Loss of services of spouse - Whether recoverable - Whether monetary loss - Civil Law Act 1956, s. 7*

TORT: *Negligence - Nervous shock - Requirements of - Close relationship - Proximity to tortious event - Means by which shock caused - McLoughlin v. O'Brian*

DAMAGES: *Fatal accident - Nervous shock - Damages - Whether claimant suffering from psychiatric illness*

The 1st plaintiff, his wife and his two children (the 2nd and 3rd plaintiffs) went to the Sunway Lagoon Theme Park to enjoy themselves. The said park was owned by the defendant. While he and his wife ('the deceased') were on the runaway train, his wife was flung out of the train and fell to her death. The 1st plaintiff now claimed for damages for himself and his two infant children under s. 7 of the Civil Law Act 1956 ('the Act') together with special damages against the defendant. As liability was not contested, the only issue before the court was on the quantum of damages the plaintiffs were entitled to.

Held:

[1] Under s. 7(3)(iv)(d) of the Act the number of years purchase is 16 years. However, on the authority of *Chan Chin Ming & Anor v. Lim Yok Eng*, deductions for contingencies, other vicissitudes of life and accelerated payment should be made. Further, there was the possibility of the 1st

plaintiff remarrying despite his present firm disinclination to do so. Therefore, the most appropriate number of years purchase was ten years and not 16 years. (see p 607 a-b)

[2] To find the net income of the deceased, the income tax and the Employees' Provident Fund contributions of the deceased should be deducted. Although the deceased received bonus with at least a minimum of one month's salary, the bonus was prospective and speculative and therefore should not be taken into account. (see p 608 f; p 609 c)

[3] Based on the evidence and the relevant deductions, the deceased's take home pay was about RM768. A sum of RM150 should be deducted therefrom as living expenses of the deceased which resulted in a figure of RM618. The multiplicand should therefore be a round figure of RM620. It followed that the loss of dependency was RM620 per month and the total loss of dependency was therefore RM620 x 10 years x 12 months which equalled RM74,400. (see p 609 d, h; p 610 a)

[4] The 2nd and 3rd plaintiffs had lost the benefits and happiness that was to be expected from the companionship of their mother. They had lost their mother's love. Their losses could not be assessed in monetary terms and so could not support a claim for damages. Therefore, the plaintiff's claim of RM20,000 for loss of love and affection was disallowed. (see p 610 b)

[4a] Although damages could not be recovered for the loss of their mother's love, they could be recovered for the loss of those services capable of being valued in terms of money which she would have rendered to them had she survived. The claim for additional expenses incurred due to the death of the deceased, *ie*, tuition fees for the children, fees for their Al-Quran classes, costs for laundry and payments made to the sister of the deceased to look after the children came under general damages and need not be specifically pleaded. If the said claims could be substantiated, then they were recoverable under s. 7(3) of the Act. The 1st plaintiff's evidence to that effect was not challenged in cross-examination. Therefore, the court accepted his evidence in relation to the said claims and awarded damages accordingly. (see p 610 c; p 612 a-d)

[5] In a claim for nervous shock, the following requirements must be satisfied, *ie*, a close relationship, proximity to a tortious event and the means by which the shock is caused (*ie*, it must come through sight or hearing of the event or of its immediate aftermath). The requirement of a close requirement between the 1st plaintiff and the deceased had

been satisfied. As to the second and third requirements, the 1st plaintiff was sitting next to the deceased in the runaway train and he saw the deceased flung out of the runaway train and fall to the ground. He saw the back of the head of the deceased which was broken and smeared with blood. As a result thereof he suffered from chronic post traumatic stress disorder from 20 November 1997 till 21 May 1998. (see p 614 e-g; p 616 a-c)

[5a] From the evidence, it was clear that the 1st plaintiff had recovered fully and was not suffering from any psychological illness at present. So for the post chronic traumatic stress disorder he suffered from 20 November 1997 till 21 May 1998, the court awarded the sum of RM5,000 for nervous shock as was awarded in the case of *Zainab Ismail v. Marimuthu & Anor*. In that case, the plaintiff's condition was even more severe than the 1st plaintiff in the present case. The 2nd plaintiff's claim for nervous shock should be disallowed as the evidence adduced did not show that he was suffering from any psychiatric illness. (see p 618 h; p 619 g-h)

[6] The 1st plaintiff was entitled to claim as damages for bereavement under s. 7(3A) read with s. 7(3B)(a) of the Act the sum of RM10,000. (see p 619 h-i)

[7] The claim for special damages must be specifically pleaded and strictly proved. There was no evidence to show that it was necessary for the 1st plaintiff to consume fresh milk to overcome his difficulty in sleeping. Therefore, that claim was disallowed. The claim for the costs of mineral water purchased to pour over the deceased's grave and which was still continuing, was also disallowed as the 1st plaintiff was not obliged to use mineral water for the said purpose. The claim for travelling expenses to the grave of the deceased and the claim for flowers purchased to be placed at the grave were claims within the ambit of the claim for bereavement. (see p 620 a, f-g; p 621 d; p 622 a)

[8] The plaintiffs had not specifically proven the expense of RM5,000 as funeral expenses. However, as the defendant conceded that a sum of RM2,000 was reasonable for funeral expenses even though the plaintiffs had completely failed to prove evidence thereof, the sum of RM2,000 as funeral expenses was awarded. Even though no receipts were produced, the court allowed the plaintiffs' claim for RM20 for death certificate, RM80 for the post mortem and RM5 for the police report. (see p 623 e-h)

[Total damages (general and special) awarded RM131,300 with interests.]

Case(s) referred to:

Chan Chin Ming & Anor v. Lim Yok Eng [1994] 3 CLJ 687 ***(refd)***
McLoughlin v. O'Brian [1982] 2 All ER 298 ***(foll)***
McLoughlin v. O'Brian [1983] 1 AC 410 ***(foll)***
Neo Kim Soon (Pentadbir Kepada Harta Pusaka Phanna Manneechuang, Simati) v. Subramaniam Ramanaidu & Anor [1996] 1 CLJ 730 ***(refd)***
Ngooi Ku Siong & Anor v. Aidi Abdullah [1984] 2 CLJ 163; [1984] 1 CLJ (Rep) 294 ***(refd)***
Rebecca Matthews & Ors v. Syarikat Kerjasama Serbaguna Gema Wong Siong Sdn Bhd & Anor [1990] 1 MLJ 443 ***(refd)***
Pang Koi Fa v. Lim Djoe Phing [1993] 3 SLR 317 ***(refd)***
Takong Tabari v. Government of Sarawak & Ors And Another Appeal [1998] 4 CLJ 589 ***(refd)***
Yeap Ching Hock v. Kajima Tasei Venture [1973] 1 MLJ 230 ***(refd)***
Zainab Ismail v. Marimuthu & Anor [1955] 21 MLJ 22 ***(refd)***

Legislation referred to:

Civil Law Act 1956, s. 7(3), (3A), (3B)(a), (ii), (iii), (iv)(d)

For the plaintiffs - Mohd Yaacob (Azmer Md Saat); M/s Lianah Yaacob & Zulkepli
For the defendant - David Lingam; M/s David Lingam & Co

Reported by Usha Thiagarajah

JUDGMENT

Tee Ah Sing J:

At the commencement of trial on 21 November 2000 the learned counsel for the defendant informed the court that the defendant is not contesting the issue of liability. And in that regard they are offering no evidence on that issue. The learned counsel for the defendant stated that there is no strict admission of liability on their part. As liability is not contested the only issue for the court to deal is on the quantum of damages the plaintiffs are entitled to.

This is a claim by Jub'li bin Mohamed Taib Taral, 1st plaintiff, who is the husband of Siti Arfah binti Sheikh Md. Dom ("the deceased") for himself and his two infant children namely Mohamad Ashraf Shub'li bin Jub'li ("the 2nd plaintiff") and Sofea Balquis binti Jub'li ("the 3rd plaintiff") under s. 7 of the Civil Law Act 1956 ("the Act") together with special damages against the defendant. The claim under s. 7 of the Act is for loss of dependency and is for the benefit of the husband and the two children.

The 1st plaintiff (SP1) has testified that he is the husband of the deceased and they have two children from the marriage namely the 2nd plaintiff aged eight years old and the 3rd plaintiff aged five years old at the time of the death of the deceased.

He testified that the deceased was born on 27 March 1968 and at the time of her death on 20 November 1997, the deceased was 29 years old.

Before his wife's death she was working as a clerk in the Bank Simpanan Nasional branch at Pudu Raya. Her monthly basic pay was RM1,140. She received Teller Allowance of RM70 per month and overtime about RM100 per month. She also received "pelarasan gaji RM150 sebulan dan juga bonus minimum sebulan gaji." SP1 confirmed that P3 is the "penyata bayaran gaji terakhir si mati" and the details in P3 are correct.

The "penyata saraan daripada penggajian" for 1997 in respect of the deceased's income was tendered as P4.

SP1 further testified as follows:

S: Boleh beritahu Mahkamah apa kehilangan kamu dan anak-anak kamu dari pendapatan simati?

J: Bayaran jagaan anak-anak sebanyak RM500.00 sebulan, tambang bas sekolah RM150.00 sebulan dan pakaian anak-anak RM100.00 sebulan.

S: Adakah apa-apa simpanan untuk anak-anak kamu oleh simati?

J: Ada. Iaitu Tabung Haji RM30.00 sebulan.

S: Akibat dari kematian isteri kamu adakah kamu alami perbelanjaan lain?

J: Ada. Perbelanjaan makan dan minum yang dibeli di kedai makan sebanyak RM500.00 sebulan. Tuition anak-anak sebanyak RM150.00 sebulan. Yang ketiga Kelas Al-Quran RM80.00 sebulan. Pakaian Dobi RM40.00 sebulan.

S: Adakah perbelanjaan-perbelanjaan ini kamu tidak alami sebelum kematian isteri kamu?

J: Untuk makan dan minum isteri saya memasak sendiri.

Pakaian digosok sendiri oleh isteri. Pelajaran dan Al-Quran diajar sendiri oleh isteri.

S: Adakah apa-apa belanja lain yang kamu terpaksa tanggung untuk anak-anak kerana kematian isteri kamu?

J: Saya memberi RM200.00 sebulan kepada kakak ipar untuk menjaga dan mendidik serta makan minum semasa ketiadaan saya untuk anak-anak saya.

In respect of special damages SP1 testified in examination-in-chief as follows:

S: Selain daripada kerugian-kerugian itu adakah kamu alami dan tuntut kerugian khas seperti dalam perenggan 19 Penyata Tuntutan (BP MS 11 ditunjukkan kepada saksi.)

J: Ia.

S: Boleh kamu beritahu Mahkamah butir-butir tuntutan kamu?

J: Satu belanja pengkebumian RM5,000.00.

S: Boleh menjelaskan RM5,000.00 untuk apa?

J: Kenduri arwah sebanyak lebih kurang 10 kali dan juga kenduri yang dibawa ke masjid pada malam jumaat sekurang-kurangnya sekali sebulan.

S: Selain dari itu apakah yang kamu tuntut?

J: No. 2 kos membuat sijil mati RM20.00, 3. Laporan bedah siasat RM80.00, 4. Laporan Polis RM5.00. Perjalanan rawatan pakar pada kadar RM50.00 setiap lawatan sebanyak lebih kurang 10 kali, 6. Kos susu segar untuk mengatasi kesukaran tidur RM99.00 sebulan selama 2 tahun, 7. Kos bunga semasa menziarahi kubur. RM40.00 sebulan sejak kematian dan masih berterusan, 8. Kos air mineral RM17.60 sebulan sejak kematian dan masih berterusan, 9. Perbelanjaan ziarah kubur RM20.00 sebulan sejak kematian dan masih berterusan.

S: Berapa kali kamu ziarah kubur isteri kamu dalam sebulan?

J: 2 kali seminggu, iaitu pada hari Jumaat dan hari cuti samada hari Sabtu atau hari Ahad.

SP1 was asked in cross-examination whether he could confirm the claims in para. 15(b) of the statement of claim are correct and true. And he answered "Perenggan 15(b) bahagian (iii) dan (iv) telah saya masukkan sebagai perbelanjaan tambahan semasa saya beri keterangan pada pagi tadi. Yang lain-lain (i), (ii), (v) dan (vi) adalah betul dan benar." Later on he said "Item (iii) dan (iv) sememangnya tidak dikeluarkan oleh si mati."

He was further cross-examined as follows:

S: Patutnya ini dua item (iii) dan (iv) sepatutnya mestilah ditolak dari jumlah?

J: Saya bersetuju item (iii) dan (iv) ditolak daripada jumlah sumbangan oleh si mati.

S: Kira mengikut perkataan Encik Jubli jumlah baru ialah RM780.00, betul?

J: Betul.

SP1 was further crossed-examined as follows:

S: Adakah si mati belanja duit sendiri untuk diri sendiri?

J: Ya.

S: Bolehkah saya menyatakan perbelanjaan sebulan ikut semua sebagai pakaian, toiletery, make-up, kasut, beg, makan tengahari, sarapan pagi, membelanja kawan makan satu bulan beliau belanjakan RM150.00 hingga RM200.00?

J: Saya tidak bersetuju dengan cadangan oleh peguam.

S: Berapa kamu anggap beliau belanja sebulan atas diri sendiri?

J: Saya tidak dapat memberi jawapan.

S: Bolehkah kamu agak-agak?

J: Saya tidak dapat agak-agak kerana saya tidak pernah mengambil tahu perbelanjaan hariannya.

S: Tetapi kamu bersetuju ada perbelanjaan hari-hari sendiri tetapi berapa kamu tidak tahu?

J: Ia.

In cross-examination SP1 was asked as follows:

S: Adakah rancangan keinginan untuk berkahwin lagi?

J: Belum ada jodoh.

S: Adakah kamu ada keinginan untuk berkahwin semula?

J: Buat ketika ini saya ingin menumpukan sepenuhnya terhadap kes ini dan membesarkan anak-anak.

S: Langsung kamu tidak ingin berkahwin lagi sehingga mati?

J: Sebagai seorang Islam, saya percaya jodoh dan maut ditentukan oleh Tuhan.

S: Dalam agama Islam tidak ada halangan untuk berkahwin lagi?

J: Ia.

The 1st plaintiff gave evidence to state that he is the husband of the deceased and that they have two children from the marriage namely 2nd plaintiff and the 3rd plaintiff.

So the claim under s. 7 of the Act is for loss of dependency and is for the benefit of the widower and the two children.

It is not disputed that at the time of her death the deceased was 29 years old.

Under s. 7(3)(iv)(d) of the Act the number of years purchase is 16 years.

In the case of *Takong Tabari v. Government of Sarawak & Ors. and Another Appeal* [1998] 4 CLJ 589 Her Ladyship Siti Norma Yaakob JCA delivering the judgment of the Court of Appeal at pp. 605-606 said:

> As we have stated earlier, the widow's appeal is twofold:
>
> (1) The 1/3 deduction of RM90,000 against the total award for loss of dependency, the objection being the right to deduct but not the amount deducted; and
>
> (2) The liability to pay Liew's costs.
>
> For the loss of dependency, the learned trial judge had on the formula provided by s. 7(3)(iv)(d) of the Act calculated the deceased's loss of earnings on the multiplier of nine years purchase and a multiplicand of RM2,500 per month after all the allowable deductions were made. These two figures are not disputed and a total sum of RM270,000 was reached as general damages for loss of dependency. The learned trial judge did not stop there but went on to deduct a sum of RM90,000 equivalent to 1/3 from the total sum calculated, thereby leaving a balance of RM180,000 payable. Apart from stating that the 1/3 deduction was for contingencies, other vicissitudes of life and accelerated payment, he did not identify what such deduction related to.
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> It is the widow's contention that such a deduction is contrary to law as by the introduction of proviso (d) to s. 7(3)(iv) of the Act on 1 October 1984, the discretion to deduct a sum for contingencies, other vicissitudes of life and accelerated payment at common law is now no longer available and with the replacement of that common law practice, there is already a built-in deduction in the statutory formula itself and a further deduction as was done in this case was not proper. She contends that the estate is entitled to be paid the total sum of RM270,000 for her claim for loss of dependency. For this contention, she relies on the minority decision of the Supreme Court in the case of *Chan Chin Ming & Anor. v. Lim Yok Eng* [1994] 3 MLJ 233.
>
> As a court that is inferior to the Supreme Court, we are bound by the principle of *stare decisis* to accept the majority decision on *Chan*'s case. That majority judgment states that as a matter of interpretation, if Parliament had intended to depart from the general system of law, it would express its intention with irresistible clearness. Since it found such clearness missing in proviso (d), the common law practice of making deductions for contingencies, other vicissitudes of life and accelerated payment continues to be in force. Under such circumstances and in reliance of the majority decision in *Chan*'s case, we found that the learned trial judge made no error of law when he made the deduction and reduced the claim for loss of dependency to RM280,000.

So, on the authority of *Chan Chin Ming & Anor. v. Lim Yok Eng (supra)* (the majority decision) I have to make deductions for contingencies, other vicissitudes of life and accelerated payment. Further I have to take into account the possibility of the 1st plaintiff remarrying despite his present firm disinclination so to do. I am of the view that the most appropriate number of years purchase is ten years and not 16 years. So in this case I award the number of years purchase as ten years.

P4 shows the total yearly income of the deceased inclusive of bonus amounting to RM15,324.19. So the average monthly income of the deceased is RM1,277.02 (RM15,324.19 divided by 12 months equal RM1,277.02). So the learned counsel for the plaintiffs submitted that this average monthly income of RM1,277 should be used and from this amount to deduct the amount for the deceased's personal living expenses and the remainder is the value of dependency for the plaintiffs. In support the case of *Rebecca Matthews & Ors. v. Syarikat Kerjasama Serbaguna Gema Wong Siong Sdn. Bhd. & Anor.* [1990] 1 MLJ 443 was cited. At p. 443 His Lordship KC Vohrah (as he then was) said:

> With respect, in the circumstances of this case, I think the more sensible approach is the one advanced by counsel for the defendants; find the net income of the deceased and deduct from that a percentage representing the deceased's personal living expenses; the remainder is the value of the dependency for the plaintiffs.

And at p. 444 His Lordship said:

> His gross earnings for 1981 as shown in the employer's return of income of the deceased to the Tax Department (the 1981 EA Form) came to $40,914.04. From this must be deducted the income tax he had to pay on his earnings and it was agreed that he probably paid $7,790 as tax. From the remainder of $33,124.04 must then be deducted his Employees' Provident Fund contribution of $3,871 (this appears in the 1981 EA Form) leaving a net income of $29,253.04 for the year 1981. This works out to $2,437.75 per month for 1981.
>
> In regard to 1982, the income from 1 January to 3 October 1982 (date of death of deceased), the employer's return of the deceased's income to the Tax Department (the 1982 EA Form) for the year 1982 showed a gross income of $39,391.75. Probable income tax that was paid has been agreed at $4,307 and the Employees' Provident Fund contribution that was made by the deceased (shown in the 1982 EA Form) was $3,871. Thus, the net income of the deceased for nine months in 1982 was $31,213.75. This works out to $3,468.19 per month.

Averaging the income of the two years, there being nothing available for the court on which to determine the amount during the trial period, the nett income is $2,953 per month to the nearest dollar. There must be reduced from this amount of $2,953 the personal living expenses of the deceased on the basis of what I have discussed earlier. Alex Mathew was a planter. Estate life is perhaps relatively quiet when compared to life in the urban area and personal expenses for a family man would probably not have been much. But he was a deputy manager of a big estate when he died and it is probable he had a fairly active social life where he would have had to incur personal expenses not required of other lower-ranking planters. It seems to me that, in the circumstances, a deduction of 25% from the net amount where the family comprised the husband, wife and two children seems appropriate and just. This would probably have covered his personal expenses (see the examples of personal expenditure mentioned in the Singapore case and in the cases cited therein and also mentioned in the Brunei case of *Lita Maddox v. Calito Guinto & Anor.* [1987] 2 MLJ 757.

There is no deduction for the cost of shared benefits such as housing and food, enjoyed as part of the family group. If this is an estate claim, I would have to make a deduction of a pro-rata share of the cost of shared benefits but this is a dependency claim and no deduction on that account should be made. Twenty-five per cent of the net amount is $738 (to the nearest dollar). Thus, the surplus amount per month for the dependants is $(2,953 - 738) which is $2,215.

It is clear that the learned counsel for the plaintiffs had misconstrued the case cited. According to the case cited to find the net income the income tax and the Employee's Provident Fund contributions of the deceased should be deducted. The Employees' Provident Fund contribution of the deceased shown in P4 is RM1,570. From the total sum of RM15,324.07 the sum of Employees' Provident Fund contributions of RM1,570 should be deducted leaving the sum of RM13,754.07. If this sum of 13,754.07 is divided by 12 months it comes to about RM1,146 per month.

In cross-examination SP1 was asked:

S: Tengok ID3. Pembayaran cukai pendapatan tidak dimasukkan di ID3?

J: Betul.

S: Berapa cukai pendapatan si mati kena bayar?

J: Saya tidak ingat.

S: Pembayaran cukai pendapatan dibayar oleh si mati?

J: Ia.

So there is evidence that the deceased paid income tax but the amount of income tax paid is not stated by SP1. Thus the court is not able to determine the total income tax paid by the deceased.

As such I reject the contention of the plaintiff that the multiplicand should be RM1,277 per month.

I accept the evidence of SP1 that the deceased's monthly basis pay was RM1,140, Teller Allowance of RM70 per month, overtime about RM100 per month and pelarasan gaji RM150 per month. Although SP1 has stated that the deceased received bonus with at least a minimum of one month's salary however this bonus is prospective and speculative and therefore shall not be taken into account in the computation of the deceased's monthly income.

Therefore her total monthly income for the above-mentioned comes to RM1,460. In P3 only the deceased's basic pay of RM1,140 was stated and the other allowances were not mentioned. Therefore from the sum of RM1,460 minus the deductions of RM692.21 as stated in P3, the deceased's take home pay was RM768 (RM767.79 rounded up to RM768) only.

According to the evidence of SP1 before the deceased's death, the deceased paid RM500 per month for taking care of the two children from her income, that she paid the school bus fare of RM150 per month for the two children. SP1 also stated that the deceased spent RM100 per month on clothing for the children and that the deceased saved with Lembaga Tabung Haji RM30 per month for the children.

It is clear in cross-examination SP1 has admitted that the deceased did not pay the bayaran tuition anak-anak of RM150 per month and the bayaran kelas Al-Quran of RM80 per month. And SP1 agreed that these two items should be deducted from the dependency claim.

So, the deceased's monthly contribution to SP1 and the children would be RM780 and not RM1010 as pleaded in para. 15 b of the statement of claim.

As stated earlier the deceased's take home pay per month was about RM768 only so I do not accept that the deceased contributed RM780 per month for the family.

Further a sum of RM150 should be deducted as living expenses of the deceased from her monthly income. Therefore RM768 minus RM150 equals RM618. I am of the view that the multiplicand should be RM620 (RM618 round up to RM620).

Thus I assess the loss of dependency at RM620 per month. The total loss of dependency is RM620 x 10 years x 12 months equals RM74,400.

I shall next deal with the claim for general damages.

The 2nd and 3rd plaintiffs have lost the benefits and happiness it was to be expected they would derive as they grew up from the companionship of their mother. They have lost their mother's love. Their losses cannot be assessed in monetary terms and so cannot support a claim for damages. I disallow the claim of RM20,000 for loss of love and affection.

Although damages cannot be recovered for the loss of their mother's love, they can be recovered for the loss of those services capable of being valued in terms of money which she would have rendered to them as their mother had she survived.

In *Neo Kim Soon (Pentadbir Kepada Harta Pusaka Phanna Manneechuang, Simati) v. Subramaniam a/l Ramanaidu & Anor.* [1996] 1 CLJ 730 the Court of Appeal has interpreted s. 7(3)(ii) and (iii) clearly. At pp. 735 and 736 His Lordship Mahadev Shankar JCA said:

> We need now to look at the new wording. Section 7(1) and (2) have not been altered. The old s. 7(3) was deleted altogether. In its place a new sub-section 7(3) was substituted. For the present it is sufficient to set out the words of the sub-section and proviso (ii) and (iii) which read as follows:
>
> > The damages which the party who shall be liable under subsection (1) to pay to the party for whom and for whose benefit the action is brought shall, subject to this section, be such as will compensate the party for whom and for whose benefit the action is brought for any loss of support suffered together with any reasonable expenses incurred as a result of the wrongful act, neglect or default of the party liable under subsection (1):
> >
> > Provided that:
> >
> > (ii) Damages may be awarded in respect of the funeral expenses of the person deceased if such expenses have been incurred by the party for whose benefit the action is brought:
> >
> > (iii) no damages shall be awarded to a parent on the ground **only** of his having been deprived of the services of a child; and no damages shall be awarded to a husband on the ground only of his having been deprived of the services or society of his wife; (emphasis added.)

Here the plaintiff was making the claim both for himself and for his son. He was not claiming for the equivalent monetary value of the services provided by the deceased but the actual monetary expense he had paid to the housekeeper and would have to continue to pay the housekeeper to look after this boy of 11 1/2 years from the date of the accident.

We agree with Mr. Chok Chin You of Counsel for the plaintiff/appellant that what has been done away with by the proviso (iii) is an award of damages, in this case to the deceased's husband, only on the ground that he has been deprived of the services or society of his wife. So far as a surviving husband is concerned the proviso has abolished any award by way of general damages for loss of consortium. In other words proof of the death of a wife, without more, will not entitle the surviving husband to an award in damages.

It is a different matter altogether where a husband has not only lost his wife, but has also been put to monetary loss which has been the direct result of the negligence. Such loss in our view continues to be recoverable.

SP1 has testified that as a consequence of the death of the deceased he has incurred additional expenses. In examination-in-chief his evidence was as follows:

S: Akibat dari kematian isteri kamu adakah kamu alami perbelanjaan lain?

J: Ada. Perbelanjaan makan dan minum yang dibeli di kedai makan sebanyak RM500.00 sebulan. Tuition anak-anak sebanyak RM150.00 sebulan. Yang ketiga kelas Al-Quran, RM80.00 sebulan. Pakaian dobi RM40.00 sebulan.

S: Adakah perbelanjaan-perbelanjaan ini kamu tidak alami sebelum kematian isteri kamu?

J: Untuk makan dan minum isteri saya memasak sendiri. Pakaian digosok sendiri oleh isteri. Pelajaran dan Al-Quran di ajar sendiri oleh isteri.

S: Adakah apa-apa belanja lain yang kamu terpaksa tanggung untuk anak-anak kerana kematian isteri kamu?

J: Saya memberi RM200.00 sebulan kepada kakak ipar untuk menjaga dan mendidik serta makan minum semasa ketiadaan saya untuk anak-anak saya.

In respect of the claim of additional expenses incurred to buy food and drinks in the shop at RM500 per month I disallow this claim. There is no basis for this because it is not part of the services of the deceased as a wife and mother. What SP1 should have done is to employ a cook or housekeeper to cook food and prepare drinks on a monthly basis. If the amount he paid to the cook or housekeeper is reasonable then this sum can be claimed as the deceased would have performed the service of cooking and preparing drinks if she was still alive.

I am of the view that the claim for additional expenses incurred due to the death of the deceased for tuition fee for the children at RM150 per month; fee for Kelas Al-Quran at RM80 per month; pakaian dobi at RM40 per month and payment of RM200 for taking care of the children comes under general damages and need not be specifically pleaded. The aforesaid claims come under para. 18 of the statement of claim (BP10) which reads as follows:

> 18. Plaintif Kedua dan Plaintif Ketiga menuntut gantirugi dari Defendan di atas kehilangan perkhidmatan, kasih sayang, pengajaran dan bimbingan yang diberikan sekiranya si mati masih hidup.

If the aforesaid claims can be substantiated by SP1 that he actually incurred them, then such claims are recoverable under s. 7(3) of the Act. (See *Neo Kim Soon (Pentadbir Kepada Harta Pusaka Phanna Manneechuang, Simati) v. Subramaniam a/1 Ramanaidu & Anor. (supra)*).

When SP1 gave evidence that as a consequence of the death of his wife he has to incur expenses of RM150 per month for the tuition fees of the children and fee of RM80 per month for kelas Al-Quran, SP1 was not challenged at all in cross-examination.

I accept the evidence of SP1 that when his wife was still alive she gave tuition and taught Quran to the children. I also accept his evidence that he spent RM150 on tuition fees and RM80 on Quran classes per month. As the children grow and reach higher forms I am of the view that the deceased if she were alive would not be able to give proper tuition to the children when they are in Forms 1, 2 or 3. As such I am of the view that the multiplier should be six years when the children are still in primary school.

So for the tuition fees at RM150 x 6 x 12 = RM10,800.

So I award RM10,800 for the tuition fees.

As for the expenses for kelas Al Quran the plaintiffs have asked for six years. So for the fees for Al Quran classes at RM80 x 6 x 12 = RM5,760. So I award RM5,760 for the fees for the Al-Quran classes.

In respect of the laundry charges I accept the evidence of SP1 that he spent RM40 on the laundry bill after the death of his wife. Before her death the laundry was done by his wife, the deceased. Since the children are aged eight years and five years respectively and taking into consideration that there is a possibility of SP1 getting married (although he stated his disinclination to do so) as he is still young, the most appropriate multiplier is eight years.

So RM40 x 8 x 12 - RM3,840. So I award this sum of RM3,840 for laundry expenses.

I shall now deal with the claim for expenses for looking after the children.

SP1 has testified that since the death of his wife he has to "memberi RM200 sebulan kepada kakak ipar untuk menjaga dan mendidik serta makan minum semasa ketiadaan saya untuk anak-anak saya." An in cross-examination SP1 was asked as follows:

S: Dan sekarang kamu hanya membayar RM200.00 untuk kakak ipar menjaga anak?

J: Ia.

Noormah bt. Sheikh Md. Dom (SP2) in examination-in-chief testified as follows:

S: Boleh kamu menjelaskan hubungan kamu dengan Jub'li bin Mohamed Taib Tarah?

J: Sebagai adik ipar.

S: Adakah selepas kematian si mati Siti Arfah binti Sheikh Md. Dom kamu memberi khidmat menjaga dua anak Enck Jub'li?

J: Ia, ada.

S: Adakah kamu terima bayaran untuk perkhidmatan ini?

J: Ia, ada.

S: Berapa bayaran kamu terima setiap bulan?

J: RM200.00.

S: Sekarang ni pun kamu masih menjaga 2 anak-anak itu?

J: Ia, saya masih menjaga mereka.

S: Adakah Puan Normah memberi apa-apa resit kepada Encik Jubli.

J: Tidak ada.

There was no cross-examination of SP2. Therefore I accept the evidence of SP1 and SP2 that SP1 paid RM200 per month to SP2 to take care of his children.

At the time of the death of the deceased on 20 November 1997 the 2nd plaintiff was eight years old and the 3rd plaintiff was five years old. And taking into consideration that there is a likelihood that SP1 would get married (although he has stated his disinclination to do so) as he is still young the most appropriate multiplier is eight years.

So for the cost of paying SP2 for taking care of the children I award the plaintiff RM19,200 (RM200 x 8 x 12 = RM19,200).

I shall now deal with the claim for nervous shock for the 1st and 2nd plaintiffs. The law as to 'nervous shock' has been considered very carefully and helpfully by the House of Lords in *Mcloughlin v. O'Brian* [1982] 2 All ER 298, [1983] 1 AC. *In Mcloughlin v. O'Brian* [1983] 1 AC 410 at 431 Lord Bridge said:

> The common law gives no damages for the emotional distress which any normal person experiences when someone he loves is killed or injured. Anxiety and depression are normal human emotions. Yet an anxiety neurosis or a reactive depression may be recognisable psychiatric illnesses, with or without psychosomatic symptoms. So, the first hurdle which a plaintiff claiming damages of the kind in question must surmount is to establish that he is suffering, not merely grief, distress or any other normal emotion, but a positive psychiatric illness.

In *Pang Koi Fa v. Lim Djoe Phing* [1993] 3 SLR 317 held (2) at page 318 reads as follows:

> From the cases of *Mcloughlin v. O'Brian* [1983] 1 AC 410; [1982] 2 All ER 298 (folld) and *Alcock & Ors. v. Chief Constable of South Yorkshire Police* [1991] 4 All ER 907 (folld) the test established in English law for the determination of liability in respect of nervous shock cases centred on the requirement of a close relationship, proximity to a a tortious event, and the means by which the shock is caused (ie, that it must come through sight or hearing of the event or of its immediate aftermath.). As regards the first requirement, the evidence showed not only the relationship of mother and child between the plaintiff and the deceased but the existence of a very close bond between them. The plaintiff therefore fell within the established class of persons whose claims have been recognised.

SP1 has testified that the day of incident, his wife, his two children and himself went to Sunway Lagoon Theme Park to enjoy themselves. While he and his wife were on the runaway train he said his wife fell and he heard his wife call out his name for the last time. He saw how the back of the head of the deceased was broken and smeared with blood. SP1 also testified that "Peristiwa ini telah menjadi igauan pada setiap kali saya ingin tidur. Setiap kali saya ingin tidur saya selalu terbayang bagaimana peritnya dan sukarnya

beliau menghembuskan nafas terakhir. Disamping itu saya sering terdengar-dengar panggilan nama saya ketika beliau terjatuh. Disebabkan perkara ini saya mengalami sukaran tidur dan sering diganggu semasa tidur. Saya terpaksa mengambil pil tidur dan kadang-kadang saya tidak boleh tidur terus hingga ke pagi. Dengan itu prestasi kerja saya turut terganggu."

SP1 has also stated that he underwent psychiatric treatment and test in Hospital Universiti Kebangsaan Malaysia and also counselling under Dr. Mat Saat Baki of Jabatan Perkhidmatan Awam seven times from 21 May 1998 till 20 August 1998.

Dato' Dr. Mat Saat Baki (SP4) confirmed that SP1 came to see him for treatment. SP4 confirmed that he issued the laporan kaunseling (exh. P1D) and laporan ujian psikologi (exh. P1E). SP4 provided counselling service to SP1 in seven sessions. The test showed that SP1 was having nervous depression, socially inactive and withdrawn emotionally and passive.

Dr. Osman Che Bakar (SP3) has testified that he is a medical doctor and that since 1990 he became a Psychiatric Specialist. On 25 May 1998 he treated SP1. SP3 did prepare a medical report as in exh. P2.

SP3 also testified as follows:

S: Apakah diagnosis penyakit yang dialami Encik Jub'li?

J: Mengikut diagnosis psikaitri adalah Post Traumatic Stress Disorder.

S: Apakah rawatan yang diberikan oleh kamu kepada Encik Jub'li?

J: Rawatan yang diberikan adalah kombinasi antara rawatan ubat-ubatan dan kaunseling.

S: Dalam kes ini beliau berjumpa doktor pada 25.5.1998 dan kematian isteri beliau pada 20.11.1997 lebih kurang 6 bulan. Adakah Post Traumatic Stress Disorder yang dialami beliau sesuatu yang biasa?

J: Dalam kes-kes Post Traumatic Stress Disorder boleh terbahagi kepada dua. Apa yang kita katakan Acute dan Cronic. Pada kes yang Acute ianya tidak berlarutan lebih daripada 3 bulan. Pada kes yang cronic lebih daripada 3 bulan.

S: Dalam kes Encik Jub'li pada pandangan kamu dalam kumpulan mana?

J: Dalam kumpulan cronic.

S: Apa punca penyakit ini pada pandangan kamu?

J: Gangguan psikologi ini boleh berlaku pada sesiapa mengalami peristiwa yang tragik.

In respect of the requirements as stated in *McLoughlin v. O'Brian (supra)*, in our case the requirement of a close relationship has been satisfied. The evidence shows the relationship of husband and wife between the 1st plaintiff and the deceased and the existence of a very close bond between them.

As regards the second and third requirements, the 1st plaintiff was sitting next to the deceased in the runaway train and he saw how the deceased was flung out of the runaway train and fell to the ground. He saw the back of the head of the deceased was broken and smeared with blood.

As a result the 1st plaintiff suffered from chronic post traumatic stress disorder from 20 November 1997 till 21 May 1998. I find that chronic post traumatic stress disorder is a form of psychiatric illness.

In deciding a figure for damages payable reliable reliance to previous cases for comparison purpose should be made. (See *Ngooi Ku Siong & Anor v. Aidi Abdullah* [1984] 2 CLJ 163; [1984] 1 CLJ (Rep) 294.

SP1 is making a claim of RM500,000 for nervous shock for himself.

In the case of *Zainab binti Ismail v. Marimuthu & Anor* [1955] 21 MLJ 22 the learned judge Hill J awarded damages for nervous shock. At p. 24 he said:

> The doctor's evidence showed that the plaintiff is genuinely suffering form shock and she appeared to me to be still a sick woman nearly two years after the accident. I consider she is entitled to a substantial part of the amount she claims and I award the sum of $5,000.00.

In *Zainab bte Ismail* the plaintiff was still a sick woman nearly two years after the accident.

In the case of *Pang Koi Fa v. Lim Djoe Phing* [1993] 3 SLR 317 which is a case from Singapore Her Ladyship Amarjeet JC at p. 320 said:

> The plaintiff's psychiatric illness arose from the trauma of being at her daughter's bedside throughout her suffering and the shock of her daughter's death. According to her psychiatrist, Dr. Lim Hsin Loh ('Dr. Lim'), the plaintiff felt very guilty about the operation and felt responsible for it. The sequence of events which contributed to the shock she experienced at her daughter's death were as follows.

And at p. 321 said:

> When her daughter died, the plaintiff was distraught. The plaintiff had watched her in severe pain and agony and upon her death, she was on the verge of a breakdown and almost committed suicide. In September 1985 she complained to Dr. EA. Heaslet of palpitations of the heart, breathlessness, insomnia, episodes of crying, loss of interest in her work and social life and pre-

occupation with memories of her daughter. He treated her for a severe depression until January 1988. Her family observed that she had undergone a personality change. Her relationship with her son and husband were strained. She was constantly preoccupied with her daughter's death and preserved her daughter's desk at the office as well as her room at home.

Her son, PW6, testified that the plaintiff had undergone a personality change after the death of his sister. She stopped cooking for the family and became over protective of him, she reacted badly when she saw other families going out in groups, and she quarrelled frequently with her husband. Prior to her daughter's death, they had not quarrelled as much. She also went to Dr. Tham's office and abused him, smashing some glass and banging some cupboards although she had ordinarily been a mild lady.

And at p. 322 said:

The plaintiff's psychiatrist, Dr. Lim, testified that she consulted him from January 1988 and another psychiatrist very briefly. He continued the treatment. He saw her often, sometimes every fortnight, sometimes monthly, sometimes after long periods in the last five years. She related to Dr. Lim a history of how her daughter had been hospitalised and then succumbed to her injuries, and how she had been at her daughter's bedside throughout and the traumatic effect the entire experience had on her.

Dr. Lim diagnosed her to be suffering from post-traumatic stress disorder and pathological grief. Dr. Lim was of the opinion that the plaintiff suffered from a mood disorder, a depressive illness secondary to grief arising out of the circumstances surrounding her daughter's death, in particular, whether her daughter had a brain tumour and whether the operation had been necessary. Her tendency to preserve her daughter's room at home and desk in the office was known as 'mummification' and was a symptom of a severe grief reaction. Dr. Lim was of the opinion that the plaintiff had become a psychiatric patient. He also referred to medical reports of the other doctors.

Based on the aforesaid her ladyship awarded S$30,000 for nervous shock. It can be seen that a sum of S$30,000 was given for the very severe psychiatric illness sustained by the plaintiff for over seven years and in the opinion of her psychiatrist, Dr. Lim, the plaintiff had become a "psychiatric patient". So this case is not a good comparable for the award of damages.

SP1 has stated that from the time of his wife's death up to the date of trial he has not been demoted and that he has been getting his annual salary increment for three years. SP1 has also said that from the time of the deceased's death he has not been warded in any hospital.

SP3 was cross-examined as follows:

Q: You have also stated in examination-in-chief that Encik Jub'li may experience post traumatic stress disorder in the future if he experiences some family tragedy?

A: Yes.

Q: This is totally speculative?

A: I think may.

Q: Which means yes?

A: Yes.

From the evidence of SP3 it is clear that there is no possibility that the 1st plaintiff would suffer post traumatic stress disorder in the future. SP3 has also stated that he did not certify that SP1 was unfit to work. And he has no reason to ward SP1 in hospital. Further SP3 in his report (exh. P2) stated "... There is no psychotic symptoms, no hallucination. No cognitive deficit. Physically no abnormality detected."

In examination-in-chief SP4 has testified as follows:

S: Selepas menjalankan rawatan kaunseling selama 7 sesi apakah hasil dari rawatan ini? Adakah pesakit pulih sepenuhnya?

J: Selepas menjalani perkhidmatan kaunseling sebanyak 7 sesi klien menunjukkan perubahan-perubahan seperti berikut: hubungan dalam keluarga dan tempat kerja bertambah baik, klien dapat menjalankan tugas dengan berkesan, perasaan murung yang berkurangan. Perasaan bimbang dan takut dapat dikawal. Bertenaga dan fikiran bercelaru berkurangan.

S: Pada pandangan Dato' adakah pesakit ini pulih sepenuh dari psikologi beliau?

J: Pada masa itu tahap kepulihan beliau ialah mampu untuk menjalankan tugas. Kebolehan berhubung dalam keluarga dan mampu mengawal perasaan.

So from the evidence of SP1, SP3 and SP4 it is clear that SP1 has recovered fully and not suffering from any psychological illness at present. SP1 is able to perform his work properly. So for the chronic post traumatic stress disorder suffered by SP1 (the 1st plaintiff) from 20 November 1997 till 21 May 1998 I award the sum of RM5,000 for nervous shock. In *Zainab*'s case the condition of the plaintiff there was more severe as compared to our case.

Juwairiyah bt. Jaafar (SP5) has testified in examination-in-chief that she was working as a counsellor at the Public Services Department attached at the Psychological Services Division from 2 September 1995 to 16 May 2000. She has a Bachelor of Science in Psychology and Biology degree and Master of Arts in Psychology.

On 20 June 1998 she attended a patient by the name of Mohammad Ashraf Shub'li bin Jub'li (the 2nd plaintiff). She did carry out counselling sessions on the 2nd plaintiff. She prepared two reports, one in counselling (exh. P1F) and one is psychological test report (exh. P1G). SP5 has stated that the 2nd plaintiff still has traces of feeling insecure, in need of attentive acting out once in a while and fear of abandonment or losing his father.

In cross-examination SP5 agreed that she has no medical degree. She specialised in counselling and abnormal psychology. Abnormal psychology is providing treatment that is not medical to clients that have abnormal problems such as depression at the same time as they are being treated by a psychiatrist.

The 2nd plaintiff was not referred to her by a medical doctor but by his father. She has no personal knowledge as to the eating situation of the 2nd plaintiff prior to his first session with her. Prior to 20 June 1998 she had no direct personal knowledge of the 2nd plaintiff's intellectual ability. SP5 also stated that on the 1st session on 5 September 1998 the 2nd plaintiff showed further progress and improvement. In June 1998 she has less than three years experience. SP5 also stated that she was not able to ascertain the 2nd plaintiff's conduct and performance in school from his teacher or headmaster. Prior to her meeting with the 2nd plaintiff in June 1998 she had no other knowledge of his emotional or psychological state, conduct or behaviour besides what his father told her.

SP5 agreed that she said the 2nd plaintiff was socially withdrawn and inactive and feeling insecure.

Further I find that SP5 is not an expert in child psychology as she has no medical degree. Also SP5 is not a clinical psychologist. I am of the view that from the evidence of SP5 and the contents of her report (exh. P1F and exh. P1G) does not show that the 2nd plaintiff is suffering from a psychiatric illness. As such I disallow the claim of nervous shock by the 2nd plaintiff.

The 1st plaintiff is entitled to claim as damages for bereavement under s. 7(3A) read with s. 7(3B)(a) of the Act the sum of RM10,000. I make an order accordingly.

I shall then deal with the claim for special damages.

It is trite law that special damages must be specifically pleaded and strictly proved. (See the case of *Ngooi Ku Siong & Anor. v. Aidi Abdullah* [1984] 2 CLJ 163; [1984] 1 CLJ (Rep) 294.)

SP1 has testified that he bought susu segar at RM99 per month for two years amounting to RM2,376 to overcome his difficulty in sleeping.

In the case of *Yeap Ching Hock v. Kaijima Tasei Venture* [1973] 1 MLJ 230 His Lordship Syed Agil Barakhbah (as he then was) at pp. 235 to 236 said:

> With regard to special damages, most of the items quoted under the particulars, other than those deleted by the plaintiff's counsel, are agreed upon by the defendants' counsel, except for the following:
>
> (1) Purchase of fruits, Brand's essence of chicken, jinseng herbs, etc. for the plaintiff.
>
> (2) The air passage from Kuala Lumpur to London and back and expenses incurred there.
>
> (3) The cost of a new artificial limb.
>
> (1) The general principle is that the plaintiff must be prepared to prove his special damages unless it has been agreed. It is not enough for him to write down the particulars and leave them for the court to decide. It is for him to prove them. (See *Sum Kum v. Devaki Nair & Anor.*, and *Khoo See Moi v. Tay Teik Chang*.) No doubt, the plaintiff gave evidence that he had purchased the extra nourishing food when he was in the hospital, but in the absence of medical evidence that they were necessary in the light of hospital food and nourishment prescribed, I am not prepared in the circumstances to allow the claim on the three items.

In our case there is no medical evidence to show that it was necessary for SP1 to consume susu segar. As such I disallow the claim of RM2,376 for the costs of susu segar.

SP1 has stated that he is claiming the cost of purchase of mineral water at RM17.60 per month and still continuing. And in the plaintiffs' submission they are claiming the amount of RM422.40

In cross-examination SP1 was asked as follows:

S: Item 7 bukan air mawar tetapi air mineral?

J: Ia

S: Adakah Encik Jub'li apa-apa dokumen untuk bukti tuntutan ini?

J: Tidak ada

S: Adakah ini wajib dalam agama Islam untuk menyiram air mineral di kubur tiap-tiap minggu dengan berterusan?

J: Digalakkan.

S: Adakah ini wajib dalam agama Islam di mana air mineral mesti dipakai?

J: Tidak.

S: Kalau kamu boleh pakai air paip tak payah pakai air Evion atau apa-apa air brand air mineral?

J: Tidak diminta dalam agama Islam untuk menggunakan air mineral.

S: Kegunaan air mineral adalah kehendak sendiri.

J: Ia.

I agree with the contention of the defendant that the usage of mineral water was done on SP1's own volition and that Muslim law does not make it obligatory to do so. I am of the view that there is no basis for this claim and I thus disallow this item.

SP1 has also testified that he is claiming the costs of flowers at RM40 per month to visit the grave since the death and still continuing. He is also claiming travelling expenses at RM20 per month for visits to the grave. He visited the grave of his wife twice a week. In cross-examination he was asked as follows:

S: Adakah ini wajib dalam Agama Islam untuk meletakkan bunga di kubur tiap-tiap minggu secara berterusan.

J: Tidak.

And in respect of the claim for travelling expenses he was asked as follows:

S: Item k dalam agama Islam adakah dikatakan dalam Al-Quran kamu mesti ziarah kubur minggu-minggu.

J: Ziarah kubur ia, dalam Al-Quran tidak menyebut ziarah setiap minggu.

S: Ziarah kubur berminggu-minggu ini adalah kehendak sendiri?

J: Ia.

I am of the view that the placing of flowers by SP1 at the grave of his wife was done on his own volition and that Muslim law does not make it obligatory to do so as admitted by SP1 himself.

I agree with the contention of the defendant that the costs of travelling expenses of SP1 to the grave of his wife and the costs of flowers placed at the grave cannot be claimed as these claims would come under the ambit of the claim for bereavement.

As such I disallow the claim of RM960 for the costs of flowers and the travelling expenses of RM460 for visiting the grave of his wife.

Since the defendant has conceded to the sum of RM195 as travelling expenses for seeking specialist medical treatment I therefore award the plaintiffs this sum of RM195.

In respect of funeral expenses SP1 stated in examination-in-chief as follows:

S: Boleh kamu beritahu Mahkamah butir-butir tuntutan kamu?

J: Satu belanja pengkebumian RM5,000.00.

S: Boleh menjelaskan RM5,000.00 untuk apa?

J: Kenduri arwah sebanyak lebih kurang 10 kali dan juga kenduri dibawa ke masjid pada malam Jumaat sekurang-kurangnya sekali sebulan.

And in cross-examination SP1 was asked as follows:

S: BP muka surat 11 ditunjukkan kepada saksi. Perenggan 19 item (a) belanja pengkebumian sebanyak RM5,000.00 adakah dokumen-dokumen bukti?

J: Tidak ada.

S: Masa pemeriksaan utama kamu telah mengatakan kamu belanja RM5,000.00 untuk kenduri betul?

J: Betul.

S: Berapa kenduri?

J: Kenduri arwah dalam Islam adalah pada hari pertama, kedua, ketiga, ketujuh, keempat puluh dan ke seratus. Dan di antara hari-hari tersebut ataupun selepasnya kita digalakkan membuat kenduri. Bilangannya adalah lebih kurang 10 ataupun lebih.

S: Perbelanjaan-perbelanjaan semua kenduri itu bukan perbelanjaan pengebumian pada hari pengebumian?

J: Ia.

In re-examination SP1 was asked as follows:

S: Kamu juga ditanya peguam Defendan berkaitan belanja pengkebumian RM5,000.00 dan kamu ada beritahu ia juga untuk belanja kenduri. Boleh kamu jelaskan ini kenduri siapa?

J: Ini adalah kenduri untuk simati.

S: Adakah kenduri perlu?

J: Islam menggalakkan kenduri untuk simati dan ia adalah penlu.

S: Kamu kata kamu tidak ada dokumen untuk perbelanjaan ini. Kenapa?

J: Persiapan untuk kenduri dan barang-barangnya tidak diberi resit dan tidak disimpan sekiranya ada.

S: Belanja pengkebumian kenapa tidak ada resit?

J: Tidak diberi resit.

From the evidence of SP1 it is clear that he has not furnished any particulars how he spent RM5,000 as funeral expenses. No receipts were tendered to substantiate this claim. The plaintiffs did not call any relatives or family members to testify as to what expenses were incurred for the funeral arrangements. Neither has the plaintiffs called any witnesses to testify as to the normal expenses incurred in a Muslim funeral.

I agree with the contention of the learned counsel for the defendant that the plaintiffs have not specifically proven the expense of RM5,000 as funeral expenses. However the learned counsel for the defendant conceded that a sum of RM2,000 is reasonable for funeral expenses even though the plaintiffs have completely failed to provide evidence or proof in support of their claim.

I am of the view that funeral expenses are normally incurred in a Muslim funeral. As such I award the sum of RM2,000 as funeral expenses.

SP1 has testified in cross-examination he is claiming the sum of RM20 for the death certificate, RM80 for the post mortem report and RM5 for the police report. SP1 was not cross-examined at all. Even though no receipts were produced, I award the plaintiffs RM20 for the death certificate, RM80 for the post mortem report and RM5 for the police report.

In summary, I award the following sums to the plaintiffs:

General Damages

(1) Dependency Claim	RM 74,400
(2) Tuition Fees for Children	RM 10,800
(3) Fees for Al-Quran Classes	RM 5,760
(4) Laundry	RM 3,840
(5) Cost of Employing Servant To Look After the Children	RM 19,200
(6) Nervous Shock for 1st Plaintiff	RM 5,000
(7) Bereavement	RM 10,000
	RM129,000

Special Damages

(1) Funeral Expenses	RM2,000
(2) Death Certificate	RM 20
(3) Post Mortem Report	RM 80
(4) Police Report	RM 5
(5) Travelling Expenses	RM 195
	RM2,300

Total (General Damages plus Special Damages) RM131,300.

General Damages shall carry interest at 6% per annum from the date of service of the writ till the date of judgment and thereafter at 8% per annum till realisation.

Special Damages will attract interest at 4% per annum from the date of service to the date of judgment at thereafter at 8% per annum till realisation. Lastly the defendant shall pay costs to the plaintiffs.